

Decision 03-05-057 May 22, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Stephen J. Page and
Jaime F. Ospina, Placo, S.A., First Jacor
Corporation for the Transfer of Control of US
Data Highway Corporation (U-6399) and
(U-6183) and Request for Expedited Relief.

Application 02-10-008
(Filed October 3, 2002)

O P I N I O N

1. Summary

This application seeks approval under Sections 851 - 854 of the Public Utilities Code¹ of a transaction that will result in a change of control of US Data Highway Corporation (US Data), which is currently authorized to provide resold local exchange services and interexchange telecommunications services in California. The transaction is structured to take effect upon approval by the Commission. The application is unopposed. The application is granted.

2. Background

US Data received its Certificate of Public Convenience and Necessity (CPCN) for its local exchange operations in 1999 pursuant to Decision (D.) 99-06-083 and its CPCN for its interexchange operations in 2000 pursuant to D.00-08-038.

¹ All statutory references are to the Public Utilities Code.

3. Description of Applicants

US Data is a California corporation with its principal business office in Pleasanton, California. Stephen J. Page is the company president. He controls approximately 90% of the outstanding shares of US Data.

First Jacor Corporation is an investment corporation incorporated in Panama with a US mailing address in Miami, Florida. Jaime F. Ospina is a minority shareholder in US data, and is a director, officer and manager of investments for Placo S.A. and First Jacor, Panamanian investment companies. Ospina's California address is also in Pleasanton.

US Data is currently at a start up stage of operation with no annual revenue other than investments by and through Ospina. US Data intends to move into an operational stage following the transfer requested so as to provide local and long distance services to customers in California.

4. Description of Transaction

Under the proposed transfer, US Data will continue in existence under the laws of the State of California, and its Certificate of Incorporation and its by-laws shall remain in effect the same as it has immediately preceding the transfer of shares.

The proposed transaction is the transfer of Four Million Seven Hundred and Eighty One Thousand two hundred and Fifty (4,781,250) shares of the common stock of US Data standing in the name of Stephen J. Page on the books of the corporation to Jaime F. Ospina, Placo, S.A., and First Jacor Corporation.

Applicants (Page and Ospina) state that under the proposed transfer, US Data will operate using the same name and operating authority. Although the transaction will result in a change of control, it will not involve any changes

in tariffs. US Data does not seek to transfer its operating authority, just authority for a change in control.

5. Financial Qualifications

US Data's pro forma income balance sheet and income statement (Exhibits 3 and 4) provide financial information that indicates, on a pro forma basis that US Data will have positive earnings. Applicants state that US Data has available to it at least \$100,000 cash or cash equivalent.

6. Technical and Managerial Expertise

Applicants state that the current management team of US Data will remain in place for the near future, and Ospina will bring new management talent to the company.

The founder of the company and president, Stephen J. Page who remains with the company, has a varied scientific and technical background with a Doctorate from the University of California.

Jaime F. Ospina has a Masters in International Relations in Universidad Javeriana, Bogotá, Columbia. He has extensive managerial experience.

7. Public Interest

Applicants state that it is in the best interest of the public and the Applicants to transfer a majority of the shares of US Data to Ospina because Ospina can provide the necessary experience, business acumen, skills for growth and capital infusion to the company, thereby serving the needs of consumers of telecommunications in California.

8. Discussion

Sections 851-854 require Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state" The purpose of these requirements is to enable the Commission,

before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co., (1916) 10 CRC 56.)

This transfer is in the public interest because the proposed transfer of control here promises improved services for California consumers. No changes in the existing services of US Data are proposed.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application. For non-dominant interexchange carriers expedited approval may be granted by the Executive Director pursuant to authority delegated to him by the Commission to grant “noncontroversial applications for authority to transfer assets or control under [Pub. Util.] Code Sections 851-855” (CAWC, Inc. (1987), D.87-04-017; see also D.86-08-057.) However in this application, Applicants seek approval for change in control for both US Data’s interexchange operations as well as its local exchange service. Therefore, in this instance, it is not appropriately delegated to the Executive Director.

In Resolution ALJ 176-3098, dated October 24, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3098.

The application is granted, subject to the terms and conditions set forth below.

9. Request for Confidentiality

Applicant requests that the Settlement and Release Agreement between Ospina and Page filed with this application be filed under seal. Applicants represent that the information is proprietary and sensitive and that the information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

10. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

11. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Dean J. Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of October 11, 2002.
2. Applicants seek approval pursuant to Sections 851-854 of the Public Utilities Code of a transaction that will transfer control of US Data from Stephen J. Page to Jaime F. Ospina.
3. US Data is authorized to provide local exchange and interexchange telecommunications services in California.
4. There will be no change in name, current services or rates provided by US Data as a result of the transfer of control.
5. Applicant requests that the Settlement and Release Agreement filed with the application be kept under seal.

6. Public disclosure of the Settlement and Release Agreement would place Applicant at an unfair business disadvantage.

Conclusions of Law

1. The proposed transfer of control has identified benefits and therefore is in the public interest.

2. This proceeding is designated a ratesetting proceeding; no protest have been received; no hearing is necessary.

3. The application is noncontroversial.

4. Applicant's request to file its financial information under seal should be granted for two years.

5. The application should be approved.

O R D E R

IT IS ORDERED that:

1. US Data Highway Corporation (US Data) and Jaime F. Ospina, Placo, S.A., First Jacor Corporation (Ospina) (collectively, Applicants) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Ospina will acquire control of US Data.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within ten days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. US Data shall make all books and records available for review and inspection upon Commission staff request.

4. Applicant's request to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

7. Application 02-10-008 is closed.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners